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10/721,135

11/25/2003

Robert Kronenberger

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
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EXAMINER

SUTTON, ANDREW W

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/721,135  
Filing Date: November 25, 2003  
Appellant(s): KRONENBERGER, ROBERT

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John S. Mortimer  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 2/8/08 appealing from the Office action mailed 8/21/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,175,963	Loeffelholz	1-2001
6,370,696	Kronenberger	4-2002
5,584,076	Armstrong	12-1996
6,408,443	Park	6-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-9, 11-15, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeffelholz (US 6,175,963) in view of Kronenberger (US 6,370,696). Loeffelholz illustrates a hat in fig. 2 including a logo 32 that are can be placed at various points around the circumference of the crown portion of the hat. The hat has a front, rear, left and right side as the applicant claims. The hat of Loeffelholz has the eight

octants claimed and since, as the applicant states, "the octants are not discernable, viewable divisions" and have no structure. The hat of Loeffelholz has a forwardly extending brim 24 with not other brims protruding from the hat and is a conventional style cap. Loeffelholz does not explicitly disclose a front right or left side identifying an event or showing a plurality of participants on the various rear and side octants claimed. Kronenberger discloses a cap in Figs. 1-5 and 10-15 that discloses various designs that include school, object, information, team, email, etc. at various points around the cap. It would have been obvious to one of ordinary skill in the art to place the information such as sporting event, and participants on a cap in the various positions claimed. Further, it is the opinion of the examiner that the information claimed, provides no structure to the cap that is not shown in the prior art are mere design choices. In regards to aesthetic design changes, *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), "The court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art." The applicant claims no structural limitations that the prior does not show, as stated in the previous and current office actions.

As to claims 2-3, 6-8, 11-14, and 16-18, the claims provide no structural limitations to the cap and are mere design choices of logos/information that would have been obvious to one of ordinary skill in the art. Whether or not a person can see or identify a logo/information would be based on totally a specific situation as to where the viewer is viewing the hat and also provides no structure limiting the hat. The various placements of logos and information provide no structural limitations over the prior art

and also are mere design choices and would have been obvious to one of ordinary skill in the art as shown in Figs. 1-5 and 10-15.

As to claim 5, Kronenberger illustrates in Fig. 13 the hole number on a golf course being placed on the hat at the bill 24.

As to claim 9, Kronenberger illustrates the crown portion 10 of the cap being an inverted cup shape as shown in Fig. 13.

As to claim 15, Kronenberger discloses that logos can be embroidered (Col. 2 line 24).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loeffelholz (US 6,175,963) in view of Kronenberger (US 6,370,696) in further view of Park (US 6,408,443). Loeffelholz/Kronenberger teaches the device substantially above. However Loeffelholz/Kronenberger does not teach the use a hat that is made in the form of a visor. Park teaches (Fig. 2) that hats including logos 11 can have an opening 1 in the crown area. It is commonly known in the art to make hats in the form visors. It would have been obvious to one of ordinary skill in the art to combine the teaching of Loeffelholz/Kronenberger and Park to give a hat that would allow for increase airflow.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeffelholz (US 6,175,963) in view of Kronenberger (US 6,370,696) in further view of Armstrong (US 5,584,076). Loeffelholz/Kronenberger teaches the device substantially above. However, Loeffelholz/Kronenberger does not teach the use of an adjustable strap along with an opening with a logo provided on the adjustable portion of the hat. Armstrong illustrates in Fig. 1 an opening in the back of the hat with an adjustable strap

20 located across the opening. A logo 46 is located on the hat. Armstrong does not explicit state that the logo identifies an event. However, the applicant does not state any unexpected results or criticality as to why the logo must identify an event. The examiner feels that the logo of Armstrong is capable of identifying an event. It would have been obvious to one of ordinary skill in the art to combine the opening and strap of Armstrong to the hat of Loeffelholz/Kronenberger to provide adjustability in the hat to allow for the ability of wearer's with multiple head sizes.

#### **(10) Response to Argument**

In response to Issue No. 1, the appellant argues that the first and second information and the specific placement of this first and second information modifies the structure of the hat as in *In re Miller*. The examiner disagrees as the function of the hat is not changed by adding the printed matter in the specified manner. The hat still function as a hat and provides information on various sides of the hat as the prior art of record shows. To further substantiate our position, the examiner would like to point at that *In re Ngai* (367 F.3d 1336, 70 USPQ2d) states that different descriptive material is non-functional and will not be given any patentable weight.

In response to Issue No. 2, the appellant argues that the prior art does not teach a third information on the adjustable strap. The appellant admits the structure of the claim is taught in the prior art, but not the information as claimed. The examiner believes that this is not patentable for the reasons stated in the rejection above.

In regards to Issue No. 3, the examiner showed the website in the May 17, 2006 that showed a product meeting the claimed invention to show that it is obvious to one of ordinary skill in the art as the product is already being produced. A date of the disclosure of the product was unable to be found in the search.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Andrew W. Sutton

/Andrew W. Sutton/

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SPE AU 3765

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TQAS TC 3700